Filed 5/11/10 In re N.D. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re N.D. et al., Persons Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. B.D. et al., Defendants and Appellants.	E048839 (Super.Ct.Nos. J223566, J223567, J223568, J223569 & J223570) OPINION

APPEAL from the Superior Court of San Bernardino County. Wilfred J. Schneider, Jr., Judge. Affirmed.

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant B.D.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and Appellant R.D.

Ruth E. Stringer, County Counsel, and Danielle E. Wuchenich, Deputy County Counsel, for Plaintiff and Respondent.

No appearances on behalf of Minors.

R.D. (Grandmother) and B.D. (Grandfather) adopted ML.D., RA.D, BN.D., MK.D., and N.D. (the children) after the children's biological mother's and father's parental rights were terminated.[1] The children, Grandmother, and Grandfather are now the subject of a dependency proceeding, in which Grandmother and Grandfather are at risk of their parental rights being terminated. At the six-month review hearing, the juvenile court granted the biological mother (Mother) and father (Father) supervised visitation with the children for one hour per month. Grandmother and Grandfather appeal the juvenile court's visitation order.

Grandmother contends that the juvenile court erred by ordering visitation between the children, Mother, and Father, because the visitation order is an impermissible modification of the order terminating Mother's and Father's parental rights. Grandmother also contends that the juvenile court erred by granting visitation because it is not in the children's best interests to visit with Mother and Father.

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[1] At the juvenile court, Grandmother requested that she and Grandfather be referred to as "Mother" and "Father," because they adopted the children. The juvenile court granted the request, and referred to the biological parents as "the biological mother" and "the biological father." We respect that Grandmother and Grandfather have adopted the children; however, for the sake of clarity, we will refer to the biological parents as "Mother" and "Father," and the adoptive parents as "Grandmother" and "Grandfather."

Grandfather contends that the juvenile court erred because it lacked jurisdiction to modify the order terminating Mother's and Father's parental rights. Grandfather also asserts that the juvenile court erred because it is not in the children's best interests to visit with Mother and Father.

Grandmother and Grandfather join in one another's contentions to the extent that the joinder is beneficial to them. We affirm the visitation orders.

FACTUAL AND PROCEDURAL HISTORY

When MK.D. was born, Mother displayed symptoms of opiate abuse. Mother and Father were investigated by the Los Angeles County Department of Children's Services (LA DCS) around September 2002. The Los Angeles County Juvenile Court awarded custody of the children to Father and Grandmother. Father moved with the children and Mother from San Pedro to Victorville. Grandmother reported to LA DCS that Father was allowing Mother to stay with the children, while Mother was working on her juvenile court case plan. The children were then removed from Father's custody, and placed with Grandmother. Father and Mother then began residing in Grandmother and Grandfather's house, with the children.

Eventually, Mother and Father moved into a separate house owned by Grandmother and Grandfather. Grandmother permitted Father to visit the children, but not Mother. Father stated that he never received notices regarding adoption proceedings, because Grandmother had the only key to the mailbox. At one point, Grandmother began referring to the children as her children, and she slapped the

children's mouths when they referred to her as "grandmother" instead of "mother." Grandmother and Grandfather adopted the children in Los Angeles County in 2005.[2]

A law enforcement welfare check at Grandmother and Grandfather's home in Apple Valley revealed dog feces throughout the home, no food in the refrigerator, exposed wiring, numerous power tools that were plugged-in, and "an enormous amount of debris, that was mixed in with the children['s] toys." The children said that Grandmother and Grandfather hit them with household objects and tree switches, and used profanity towards the children. During the welfare check, each child reported being hit within the prior 24-hour period. ML.D. said that his sister, RA.D., was often hit with a belt by Grandmother. At the time of the welfare check, ML.D. had a bruise on his upper inner left arm. ML.D. reported that Grandmother struck his arm with a frying pan.

On October 28, 2008, at a contested jurisdiction hearing, the children's trial counsel requested a court order authorizing visitation between the children, Mother, and Father. San Bernardino County Children and Family Services (the Department) supported the request for visitation. The Department's trial counsel argued that Father was legally the children's brother, because Grandmother adopted the children; therefore, as a sibling, Father had a right to visit the children. The trial court granted the request

[2] The detention report reflects that Grandmother adopted the children; however, we infer that Grandfather also adopted the children, because the petition in the instant case refers to Grandfather as the children's legal father. The record before this court does not include the adoption papers from Los Angeles County.

for Mother and Father to have supervised visitation with the children, "for the purpose of sibling visits."

The juvenile court ordered that the children continue to be removed from Grandmother and Grandfather's custody, and that the children visit with Mother and Father for one hour per month. The children's juvenile court attorney objected to limiting the visits with Mother and Father to one hour per month, but the objection was overruled.

On July 1, 2009, Grandmother filed a request to change a court order. (§ 388.) Grandmother requested that the juvenile court suspend visitation between the children, Mother, and Father. In her petition, Grandmother wrote that the Department "cannot and must not place the children in a home where there has been substantiated sexual abuse—perpetrated against one of these very children, and therefore the children should not be encouraged to develop a bond with [Mother and Father] and led to believe that placement with [Mother and Father] is an option."

At the contested six-month review hearing on July 9, 2009, the juvenile court continued all non-conflicting prior orders. A previous non-conflicting order, from the contested jurisdiction hearing, was the order granting once per month supervised visits between Mother, Father, and the children. Also at the July 9, 2009, hearing, the juvenile court denied Grandmother's request to modify the visitation order (§ 388) between Mother, Father, and the children, after finding that it would not be in the children's best interests to terminate the visits.

DISCUSSION

A. VOID ORDER

1. *GRANDMOTHER*

Grandmother contends that the juvenile court's order continuing visitation between Mother, Father, and the children is void because it was an impermissible collateral modification of the Los Angeles Juvenile Court's order terminating Mother's and Father's parental rights.[3] We disagree.

"When [a] court enters an order terminating parental rights in a section 366.26 proceeding, the relationship between parent and child ceases to exist, and parent and child are divested of all legal rights and powers with respect to each other. [Citation.]" (*In re Miguel A.* (2007) 156 Cal.App.4th 389, 394.) "'[A] juvenile court lacks jurisdiction to modify or revoke an order terminating parental rights once it has become final.' [Citation.]" (*In re Cody B.* (2007) 153 Cal.App.4th 1004, 1010 (*Cody B.*); see

[3] In Grandmother's opening brief, she writes, "[Grandm]other contended in her arguments and section 388 petitions that the juvenile court's order granting visitation to the biological parents in this case 'is an impermissible collateral attack on the order terminating . . . parental rights.' [Citation.]" Grandmother's argument concludes, "Therefore, the orders made on July 9, 2009, granting visitation to the biological parents, whose parental rights have been terminated since 2005, must be vacated." It appears that Grandmother's contention relates to the court's six-month review order continuing visitation between Mother, Father, and the children, rather than the order denying Grandmother's request to change a court order (§ 388), despite Grandmother's initial reference to her section 388 petition. We note that the Department's respondent's brief argues that the juvenile court did not abuse its discretion by denying Grandmother's section 388 petition. Due to the confusion created by Grandmother's opening brief, we will apply the Department's arguments concerning Grandmother's section 388 petition to our review of the visitation order that was entered at the six-month review hearing.

also § 366.26, subd. (i)(1).) A collateral attack occurs when a party brings a second action to attack a final judgment entered in a previous case. (See *Estate of Buck* (1994) 29 Cal.App.4th 1846, 1854.)

An order of supervised visitation is akin to a contact order, not a custody order. (See *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 713 [sole legal and physical custody given to father, mother granted supervised visitation]; see also *In re J.N.* (2006) 138 Cal.App.4th 450, 460 [discussing telephone visitation]; see also *In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 839 [discussing visitation and a no contact order]; see also *In re Marriage of Meier* (1975) 51 Cal.App.3d 120, 123 [visitation is not permanent in nature].) Accordingly, the visitation order did not grant Mother and Father a legal parent-child interest in the children; therefore, the juvenile court's supervised visitation order does not constitute a modification of the order terminating Mother's and Father's parental rights.[4]

Grandmother relies on *In re Jacob E.* (2004) 121 Cal.App.4th 909, 925 (*Jacob E.*) to support her position that the visitation order was an impermissible collateral attack on the order terminating Mother's and Father's parental rights. In *Jacob E.*, the biological parents' rights were terminated in September 2000. (*Id.* at p. 914.) The two children were placed in their grandmother's home, but were not adopted by their

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[4] Our conclusion is not intended to be interpreted that, as a matter of law, any visitation order is not a collateral modification of an order terminating parental rights. Rather, our conclusion is intended to stand for the proposition that one hour per month of supervised visitation does not give a parent a recognized legal interest in his or her child.

grandmother. In August 2001, one of the children, Richard, was removed from his grandmother's care. (*Id.* at p. 915.) In September 2002, the caseworker raised concerns about the care of the second child, Jacob. (*Id.* at p. 916.) Jacob's attorney requested that Jacob be detained. (*Id.* at p. 917.) In May 2003, Jacob's grandmother requested de facto parent status. (*Ibid*.) At the hearing on the grandmother's de facto parent application, Jacob's biological mother requested court appointed counsel. (*Id.* at p. 918.) The grandmother appealed the denial of her de facto parent application. (*Ibid*.) The LA DCS appealed the juvenile court's order granting the mother visitation with Jacob. (*Id.* at p. 925.) The reviewing court concluded that the visitation order was an impermissible collateral attack on the order terminating the mother's parental rights because the mother "was asking the court to reinstate her as a parent." (*Ibid.*)

Nothing in the instant case reflects that the visitation with Mother and Father is meant to reinstate Mother and Father as the children's parents, especially in light of (1) visitation being ordered pursuant to the sibling visitation statute (§ 362.1, subd. (a)(2)); and (2) the juvenile court's comment, "We don't have the [biological] parents trying to come back. They're not a party to this lawsuit. They are not players in this game at all." Accordingly, it appears that the instant case is distinguishable from *Jacob E.* in two respects. First, the instant case involves the grandparents' dependency case, while *Jacob E.* involved the biological mother's dependency case. Second, Mother's and Father's visitation is not meant to reinstate Mother and Father as the children's legal parents. In sum, we do not find Grandmother's reliance on *Jacob E.* to be persuasive.

Grandmother also relies on the case of *Cody B.*, *supra*, 153 Cal.App.4th 1004 to support her contention. In *Cody B.*, the biological mother's parental rights to her child, Cody, were terminated in 2001. Cody's adoptive parent allowed Cody's biological mother to live with Cody. Cody was removed from his adoptive parent's custody in 2006. (*Id.* at p. 1007.) Cody and his biological mother sought an order designating Cody's biological mother as Cody's "presumed mother." (*Id.* at p. 1008.) The juvenile court directed the San Diego County Health and Human Services Agency to evaluate the biological mother's home for possible placement of Cody, explaining that she could be a foster mother. The agency also agreed to facilitate visitation between Cody and his biological mother. (*Id.* at p. 1009.)

The reviewing court concluded that Cody's biological mother's motion for presumed parent status sought reinstatement of her parental rights to Cody, and could lead to her receiving custody of Cody. (*Cody B.*, *supra*, 153 Cal.App.4th at p. 1012.) Therefore, the reviewing court concluded that the mother's motion amounted to a collateral attack on the judgment terminating her parental rights. (*Id.* at pp. 1012-1013.)

We find the instant case distinguishable from *Cody B.*, because Mother and Father were granted supervised visitation—they were not seeking placement of the children or presumed parent status. As noted *ante*, supervised visitation did not give Mother and Father a legal parent-child interest in the children, and therefore, the instant matter is distinguishable from *Cody B.*

2. *GRANDFATHER*

a) Lack of Jurisdiction

Grandfather contends that the juvenile court's order continuing visitation between Mother, Father, and the children is void because the juvenile court lacked authority to make such an order. We disagree.

"Lack of jurisdiction in the 'most fundamental or strict sense means an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties. [Citation.]' [Citations.] And any judgment or order rendered by a court lacking subject matter jurisdiction is "void on its face . . . ." [Citation.]' In a broader sense, lack of jurisdiction also exists when a court 'make[s] orders which are not authorized by statute.' [Citation.]" (*In re Marriage of Jackson* (2006) 136 Cal.App.4th 980, 988.) For example, when the state constitution or a statute provides for a jury trial, if a trial court denies or curtails that right, then the trial court has acted in excess of its jurisdiction. (*Corder v. Corder* (2007) 41 Cal.4th 644, 652.)

When determining whether the juvenile court acted in excess of its jurisdiction, we first examine the language of the pertinent statute (*Corder v. Corder*, *supra*, 41 Cal.4th at p. 653), in this case, section 366.26, subdivision (i)(1). The foregoing statute provides, "Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise . . . . After making the order, the juvenile court shall have no power to set aside, change, or modify it, except as provided in paragraph (2) . . . ." (§ 366.26, subd.

(i)(1); see also *In re Zeth S.* (2003) 31 Cal.4th 396, 407, fn. 4.) Paragraph (2) addresses situations in which children are not adopted within three years of the court terminating parental rights. (§ 366.26, subd. (i)(2).)

Based upon the language of the statute, and Grandfather's contention, we must determine whether the juvenile court acted in excess of its statutory authority by setting aside, modifying, or changing the order terminating Mother's and Father's parental rights. As we explained *ante*, the visitation orders did not grant Mother and Father a legal interest in the children; and therefore, the juvenile court's supervised visitation order does not constitute a modification, change, or setting aside of the order terminating Mother's and Father's parental rights. Consequently, we conclude that the juvenile court did not act in excess of its jurisdiction.

Grandfather cites *In re Jerred H.* (2004) 121 Cal.App.4th 793 (*Jerred H.*), to support his argument.[5] In *Jerred H.*, Jerred was removed from his mother's care in 2001. Jerred was placed with his stepfather, who was separated from Jerred's mother. (*Id.* at p. 795.) Jerred's mother's parental rights were terminated in February 2003. (*Id.* at p. 796.) At that time, Jerred's stepfather was considering adopting Jerred. (*Id.* at pp. 795-796.) Around August 2003, Jerred was removed from his stepfather's care due to the stepfather's home being condemned. In October 2003, Jerred requested that his mother's parental rights be reinstated. Jerred's counsel requested that the stepfather be

[5] Grandfather cites some of the same cases cited by Grandmother. We choose to not repeat our analysis of the various cases, and therefore, in this section, we will address the cases that Grandfather relies upon that were not relied upon by Grandmother.

declared Jerred's presumed father. The juvenile court denied both requests citing a lack of jurisdiction to modify the order terminating parental rights. Jerred appealed the juvenile court's ruling. (*Ibid.*)

The reviewing court affirmed the judgment; the court reasoned that the stepfather's parental rights had been terminated along with Jerred's mother's parental rights, because the stepfather participated in the termination hearing and the termination order extinguished the rights of "'the alleged natural father, and of any person claiming to be the father of the child,'" despite (1) the stepfather not claiming to be a presumed father at the termination hearing; and (2) the fact that adoption was considered at the time parental rights were terminated. (*Jerred H.*, *supra*, 121 Cal.App.4th at pp. 797-799.) Therefore, the reviewing court concluded that the juvenile court did not have jurisdiction to grant the stepfather presumed father status. (*Id.* at p. 799.)

We find *Jerred H.* distinguishable from the instant case because Mother and Father are not seeking a legal interest in the children—Mother and Father are not seeking placement or presumed parent status—rather, they were granted one hour per month of supervised visitation. Accordingly, the juvenile court was not acting outside the bounds of its authority.

At oral argument, Grandfather's appellate counsel argued that it is "black letter law" that a juvenile court cannot order visitation between (1) a parent whose parental rights were terminated, and (2) the child to whom the parent's rights were terminated. Grandfather's appellate counsel cited the recent case of *In re Noreen G.* (2010) 181 Cal.App.4th 1359 (*Noreen G.*), to support his position.

In *Noreen G.*, the probate court declared two children free from the custody and control of their biological parents (Prob. Code, § 1516.5, subd. (a)), but at the same hearing ordered visitation between the children and the biological parents. (*Noreen G., supra*, 181 Cal.App.4th at p. 1372.) The children's guardians appealed the visitation order. (*Ibid.*) The guardians argued that the probate court acted in excess of its jurisdiction by ordering visitation, because the biological parents had lost their parental rights to the children. (*Id.* at p. 1390.)

The reviewing court analyzed the jurisdiction of the probate court by comparing it to the authority granted to the juvenile court in dependency proceedings (Welf. & Inst. Code, § 366.26), and the family court in adoption proceedings (Fam. Code, § 8617). (*Noreen G., supra*, 181 Cal.App.4th at p. 1391.) When analyzing dependency proceedings, the reviewing court wrote, "[N]othing in Welfare and Institutions Code section 366.26 requires the court to address postadoption visitation when terminating parental rights under Welfare and Institutions Code section 366.26, and the [juvenile] court has no authority to essentially modify a termination order by granting visitation to the parent. [Citations.]" (*Noreen G., supra*, 181 Cal.App.4th at p. 1392.) *Noreen G.* does not explain how a visitation order constitutes a modification of an order terminating parental rights; therefore, we analyze the citations provided by *Noreen G.* In support of the foregoing proposition, the *Noreen G.* court cited (1) *Jacob E.*, which we distinguished *ante*; (2) *In re Hector A.* (2005) 125 Cal.App.4th 783 (*Hector A.*); and (3) *In re Diana G.* (1992) 10 Cal.App.4th 1468 (*Diana G.*).

Hector A. holds that section 366.29, which concerns postadoption visitation agreements, does not require that a juvenile court address the subject of postadoption visitation at a hearing terminating parental rights. (*Hector A.*, *supra*, 125 Cal.App.4th at p. 799.) In other words, *Hector A.* concerns the procedural requirements for addressing post adoption visitation agreements (§ 366.29).

In *Diana G.*, Diana's mother contended that the juvenile court erred by not ordering visitation between Diana and the mother. The reviewing court noted that the final ruling had not been made in the matter, because the juvenile court delayed the permanency planning hearing for 60 days to allow the foster family to discuss adopting Diana. (*Diana G.*, *supra*, 10 Cal.App.4th 1482.) Nevertheless, the reviewing court noted that the juvenile court was not required to order visitation because the juvenile court had found that termination of parental rights was in Diana's best interests. (*Ibid.*) In other words, *Diana G.* stands for the principle that a juvenile court is not required to address the issue of visitation once termination of parental rights has been ordered.

We do not find Grandfather's reliance on *Noreen G*. to be persuasive for several reasons. First, the reviewing court discussed dependency proceedings solely for the sake of interpreting the Probate Code. Therefore, the remarks and comments concerning the Welfare and Intuitions Code were not central to the court's opinion. Second, *Diana G.* and *Hector A.* relate to the reviewing court's comment that "nothing in Welfare and Institutions Code section 366.26 requires the court to address postadoption visitation when terminating parental rights." (*Noreen G.*, *supra*, 181 Cal.App.4th at p. 1391.) The procedural/timing aspect of addressing postadoption

visitation is not relevant to the contention raised by Grandfather. Third, we have already distinguished *Jacob E.* from the instant case. In sum, the issue of visitation at a six-month review hearing in a dependency case was not central to the probate issue being analyzed by the *Noreen G.* court. Further, the cases cited by the *Noreen G.* court, concerning postadoption visitation do not persuade us that an order of supervised visitation is a modification of a prior order terminating parental rights.

b) Sibling Visitation

In Grandfather's opening brief, he discusses section 366.26, subdivision (c)(1)(B)(v), which concerns not terminating parental rights if doing so will interfere with a sibling relationship. Grandfather contends that "[i]t would be absurd to suggest" that section 366.26, subdivision (c)(1)(B)(v)) "could be used to justify the children's visits with their biological parents." Grandfather raises the foregoing contention under the subheading "Legal Strangers/Siblings," which is under the larger heading concerning the juvenile court's alleged lack of jurisdiction. Grandfather's exact argument is unclear, but we infer from the heading and subheading that Grandfather is asserting (1) the juvenile court lacked jurisdiction to modify the order terminating Mother's and Father's parental rights, and (2) section 366.26, subdivision (c)(1)(B)(v) is not a legal loophole that confers jurisdiction upon the juvenile court.

When the juvenile court made the disputed visitation order, it said, "I'm [entering the visitation order] for the purpose of sibling visits from that point of view." Based upon the juvenile court's comment, it appears that visitation was ordered pursuant to the sibling visitation statute (§ 362.1, subd. (a)(2)). It does not appear that the juvenile

court relied on section 366.26 when ordering visitation. Accordingly, we find Grandfather's argument concerning section 366.26, subdivision (c)(1)(B)(v) to be irrelevant to this appeal.

B. BEST INTERESTS

1. *GRANDMOTHER*

Grandmother contends that the trial court erred by ordering visitation between Mother, Father, and the children, because visitation with Mother and Father is not in the children's best interests.[6] We disagree.

"The juvenile court properly considers the dependent child's interest in sibling visitation throughout the case . . . and may modify visitation orders at subsequent

[6] In her opening brief, Grandmother writes, "[T]he juvenile court also erred in finding that terminating visitation by the biological parents was not in the best interest of the children." From this sentence, it appears that Grandmother is asserting the juvenile court erred by denying her request to change a court order (§ 388), due to grandmother focusing on the juvenile court's decision not to *terminate* visitation. However, Grandmother concludes her argument by writing, "[T]he juvenile court also erred in finding that it could order visitation for these parents with these children to promote their best interests." In this sentence, it appears that Grandmother's contention relates to the juvenile court's six-month review order continuing visitation between Mother, Father, and the children, because Grandmother refers to the court *ordering* visitation. In sum, it is unclear if Grandmother is asserting that the juvenile court erred when performing the best interests analysis at (1) the six-month review hearing, or (2) the section 388 hearing. Grandmother's notice of appeal reflects that she is appealing from "Visitation Orders." Based on Grandmother's notice of appeal, we infer she is contending that the trial court erred when performing the best interests analysis at the six-month review hearing, because that hearing involved the continuation of the visitation order.

hearings as the child's needs require."[7] (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1002, fn. omitted.) The juvenile court is required to "'consider whether continuing . . . visitation is in the child's best interests.' [Citation.]" (*In re Candida S.* (1992) 7 Cal.App.4th 1240, 1254.) We review a visitation order for an abuse of discretion.[8] (*In re Robert L.*, *supra*, 21 Cal.App.4th at p. 1067; see also *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255 [applying the abuse of discretion standard of review to a visitation order in a child custody matter].)

The Department's April 28, 2009, status report reflects the following: The children were residing in a foster care placement. The children visited with Mother and Father once per month for one hour. The children "repeatedly asked to spend more time with their biological parents." MK.D. and N.D. cried and clung to Mother and Father at

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[7] Grandmother writes that the juvenile court erred in finding that visitation would be in the children's best interests because Mother and Father "are not simply 'siblings.'" However, Grandmother does not raise a separate contention that the juvenile court erred by applying the sibling visitation provisions in this case (§ 362.1, subd. (a)(2)). Accordingly, we will assume, without deciding, that the sibling visitation provisions are applicable in the instant case.

[8] The Department contends that the substantial evidence standard of review applies when an appellate court analyzes whether a visitation order is in a child's best interests. In support of the substantial evidence standard of review, the Department cites *In re Misako R.* (1991) 2 Cal.App.4th 538, 545, in which the appellate court reviewed the reasonableness of reunification services provided to the family. The Department also cites *In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 415, 420, which concerned a minor being declared free from the parental custody and control of his father (Civ. Code, § 232). We do not find the cases cited by the Department to be persuasive authority for the applicable standard of review, because they do not concern the review of a visitation order in a dependency proceeding. We rely on the abuse of discretion standard of review that is cited in *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067, which addresses a visitation order in a dependency case.

the end of their visits. Mother and Father provided the Department with photographs of Mother and Father with the children (1) at home, (2) at family outings, and (3) spending holidays together. The photographs were taken between 2004 and 2007—after Mother's and Father's parental rights were terminated. Accordingly, Mother and Father were never removed from the children's lives. The Department found that Mother and Father were "loving and caring" towards the children and had been "active and involved in the children's lives."

Based upon the foregoing report, it was in the children's best interests to visit Mother and Father because the children were proceeding through their second dependency case, and Mother's and Father's visits likely provided the children with a sense of stability, due to Mother and Father being a constant presence in the children's lives. Accordingly, we conclude that the juvenile court did not abuse its discretion by ordering visits between Mother, Father, and the children.

Grandmother asserts that the juvenile court abused its discretion because there was no evidence that Mother and Father addressed the issues that caused their parental rights to be terminated. The record reflects that Mother and Father were "loving and caring" towards the children, and that Mother and Father did not demonstrate "inappropriate interaction" with the children. Accordingly, it appears from the record that Mother and Father sufficiently addressed their issues to allow for one hour per month of supervised visitation.

Next, Grandmother contends that the juvenile court abused its discretion because the children suffered nightmares, headaches, and panic attacks while in foster care. The

Department's report reflects that ML.D.'s and RA.D.'s anxiety and stress arose from the thought of returning to Grandmother and Grandfather's home. ML.D. and RA.D. expressed anger towards Grandmother and Grandfather, and were diagnosed with Post Traumatic Stress Disorder. BN.D. and MK.D. initially awoke with nightmares in their foster placement; however, once the children adapted to their new environment they began "thriving" in the home. In sum, it does not appear that the children's nightmares, headaches, and panic attacks were due to their visits with Mother and Father. Accordingly, we find Grandmother's argument unpersuasive.

2. *GRANDFATHER*

Grandfather contends that the juvenile court erred by ordering visitation between Mother, Father, and the children because it is not in the children's best interests to visit with Mother and Father. We disagree.

We have concluded *ante*, that the juvenile court did not abuse its discretion by ordering visitation between Mother, Father, and the children. Accordingly, in this subsection we will address only Grandfather's arguments.

Grandfather contends that he and Grandmother have an adversarial relationship with Mother and Father. Therefore, Grandfather asserts that it is unlikely that Mother and Father are promoting the reunification process during their one hour per month visitation with the children. Grandfather's contention is based upon speculation and conjecture. Nothing in the record supports a finding that Mother and Father have tried to impede the reunification process. To the contrary, the Department's six-month report reflects the following: "The biological parents appear loving and caring regarding the

children's disclosures of abuse and neglect and have been active and involved in the children's lives. At this time, the biological parents have not demonstrated inappropriate interaction or malicious engagement with the children, or the department." As reflected in the report, the Department supervises Mother's and Father's visits with the children. If Mother and Father were hampering the reunification process, then one would expect the Department to document such behavior. In sum, we find Grandfather's argument unpersuasive.

Next, Grandfather contends that the juvenile court erred by finding that visitation would be in the children's best interests because there was no evidence that Mother and Father resolved the issues that led to their parental rights being terminated. We agree that the record does not include documents concerning the Los Angeles County dependency case. However, the Department's reports of Mother's and Father's interaction with the children reflect appropriate behaviors on the part of Mother and Father. Further, the juvenile court was very cautious in ordering one hour per month of supervised visitation. Accordingly, we are not persuaded that the juvenile court abused its discretion.

Finally, Grandfather contends that it is not in the children's best interests to visit with Mother and Father because it gives the children false hope that they will be able to return to Mother's and Father's custody. Contrary to Grandfather's position, the juvenile court said, in the presence of ML.D., RA.D., and their attorney, "We don't have the [biological] parents trying to come back. They're not a party to this lawsuit. They are not players in this game at all." The foregoing statement demonstrates that the

juvenile court had no intention of permitting Mother and Father to regain a legal interest in the children. Consequently, it does not appear that the juvenile court instilled a false hope in the children. Instead, it seems that Grandfather's argument is based upon his speculation that the children have, or could develop, a false hope of Mother and Father being awarded custody. We cannot find an abuse of discretion based upon speculation. (See *In re Esmeralda S.* (2008) 165 Cal.App.4th 84, 96 [Fourth Dist., Div. Two] [speculation cannot support reversal of a dependency judgment].) Accordingly, we are not persuaded that the juvenile court abused its discretion when it ordered visitation.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ MILLER
J.

We concur:

/s/ HOLLENHORST
Acting P. J.

/s/ KING
J.